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JAMES R. BROWNING, Clerk

IN THE

SUPREME COURT OF THE UNITED STATES.

RESERVE LIFE INSURANCE COMPANY, GEORGE WASHINGTON LIFE INSURANCE COMPANY, and PROFESSIONAL INSURANCE CORPORATION,
Petitioners,

vs.

BANKERS LIFE AND CASUALTY COMPANY, J. EDWIN LARSON and HARTFORD ACCIDENT AND INDEMNITY COMPANY,
Respondents.

No. 272.

BRIEF

Of Respondent, Hartford Accident and Indemnity Company, in Response to Petition for Writ of Certiorari.

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INTRODUCTION.

The Court of Appeals for the Fifth Circuit reversed the judgment of the United States District Court for the Southern District of Florida, Miami Division, which had granted motions for summary judgment filed by the parties defendant. Reserve Life Insurance Company, George Washington Life Insurance Company and Professional Insurance Corporation, petitioners for the writ of certiorari here, this respondent and J. Edwin Larson, who is Insurance Commissioner of Florida, were named as parties defendant in the trial court. This respondent has filed a cross-petition for certiorari.

The opinion of the Fifth Circuit, the grounds upon which jurisdiction of this court is invoked, the statement of the case, and the questions presented for review are fully set forth in the petitioner's petition for writ of certiorari.

ARGUMENT.

This respondent has reviewed the arguments and cases cited in the petitioner's petition for writ of certiorari and concurs with the view of petitioners that a writ of certiorari should issue from this court to the Court of Appeals for the Fifth Circuit and that the decision of that court should be reversed and the judgment of the District Court be reinstated.

This respondent further believes that the opinion of the Fifth Circuit is erroneous and contrary to opinions of this Court and previous opinions of the Fifth Circuit and that certiorari should be granted in this case for the following reasons:

This suit is brought under the provisions of Section 1 of the Sherman Act (15, U. S. C. A., Sec. 1) and Section 4 of the Clayton Act (15, U. S. C. A., Sec. 15). The complaint attempts to allege a conspiracy between J. Edwin Larson, Insurance Commissioner of the State of Florida, and Zack D. Cravey, Insurance Commissioner of the State of Georgia, which conspiracy the Plaintiff claims to be a violation of said Section 1, giving rise to an action for treble damages under Section 15. The statute does not apply to State action or the action of State officials. (**Parker v. Brown**, 317 U. S. 341, 87 L. Ed. 315; **Apex Hosiery Co. v. Leader**, 310 U. S. 469, 84 L. Ed. 1311.)

It is an essential ingredient of a cause of action for treble damages on account of acts alleged to violate Section 1 of the Sherman Act that the complaint allege in detail facts showing that, as a result of the alleged combination or conspiracy, the general public has suffered some injury of a type forbidden by the statute. (**Crummer Co. v. DuPont**, 223 Fed. 2d 238, pp. 244 and 245 [C. C. A. 5]; **Kinnear-Weed Corp. v. Humble Oil & Refining Co.**, 214 Fed. 2d 891 [C. C. A. 5]; **Hudson Sales Corp. v. Waldrip**, 211 Fed. 2d 268 [C. C. A. 5].)

The complaint fails to allege any such public injury as would constitute a violation of Section 1 of the Sherman Act, and none of the depositions taken herein by either party demonstrate any such public injury. On the contrary, the evidence completely disproves any such public injury.

A comparison of the pleadings in the cases from the Fifth Circuit, cited above, and those in the cases from this Court, cited above, clearly demonstrate that in reversing the judgment of the District Court, the Fifth Circuit made a radical departure from its own holdings and that the decision clearly is contrary to the holdings of this Court in cases involving the questions here involved.

CONCLUSION.

It is respectfully submitted that a writ of certiorari should issue from this Court to the Court of Appeals for the Fifth Circuit, and that the decision of that court should be reversed and that the judgment of the District Court should be reinstated.

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M. F. GOLDSTEIN,

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B. D. MURPHY,

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ROBERT E. COLL,

Attorneys for Respondent, Hartford Accident and Indemnity Company.

Certificate of Service.

I Certify that on this .... day of ....., 1958, a copy of the foregoing Brief was mailed to the following: Brundage & Short, 111 W. Washington Street,

Chicago 2, Illinois, and Walton, Lantaff, Schroeder, Atkins, Carson & Wahl, DuPont Building, Miami, Florida, attorneys for Respondent Bankers Life and Casualty Company; Brigham, Black, Niles & Wright, Brigham Building, Miami 32, Florida, attorneys for Respondent J. Edwin Larson; and James A. Dixon, 908 Ainsley Building, Miami 32, Florida, attorney for Petitioners Reserve Life Insurance Company, George Washington Life Insurance Company, and Professional Insurance Corporation.

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Attorney for Respondent.